

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/232 /2010 – SM[BR]ST/CO/198/2010& ST/COD / 406/2010-SM[BR] Date 20/12/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8, PANCHKULA
(HARYANA) 134119.
C.C.E. PANCHKULA

M/S MOHAMMAD GHANI

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1453 / 2010-SM[BR]** dated 9.12.2010
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S MOHAMMAD GHANI
(SUGAR HANDLING
CONTRACTOR), R/O 621, OLD
HAMIDA, YAMUNANAGAR.
2. Adv. / Consult
NONE;-----

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:09.12.2010

Service Tax Appeal No.232/10-SM
Service Tax/ CO/198/10 &
Service Tax COD/406/10 SM

[Arising out of Order-in-Appeal No.236/ST/DLH/2009 dated
12.11.2009 passed by Commissioner of Central Excise
(Appeals), Delhi-II].

Commissioner of Central Excise, Panchkula ...Appellant

Vs.

M/s.Mohammad Ghani ... Respondent

Present for the Appellant :Shri.K.P. Singh, SDR
Present for the Respondent :None

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

final **ORDER NO. 1453 / 2010 SM (Bx)** **DATED:09.12.2010**

PER: D.N.PANDA

None present for the respondent.

2. Ld. DR submits that the Appellate Order has travelled beyond its jurisdiction. The show cause notice was well-found^{ed}. granting opportunity for rebuttal in respect of penalty proposed under section 76, 77 & 78 of the Finance Act 1994. The Adjudicating Authority imposed penalty under section 78 of the Finance Act 1994 to the extent of Rs.2,61,849/-. Similarly penalty under section 77 was imposed. But the Appellate Order decided a case which was not before the first

Appellate Authority. He contrarily held that penalty under section 76 is not imposable. Therefore, the appellate order having assumed a wrong jurisdiction as well as presumed the case to be under section 76 should not be given a sanction.

3. Heard the Id. DR.

4. When para 5 of the impugned order is looked into, entire submissions of the Id. DR appears to have force. Without expressing any opinion on merit, ^I remand the matter to the Id. Appellate Authority to look into the sum and substance of the adjudication order and take appropriate decision only in respect of the matter in controversy before him, granting fair opportunity of hearing to the appellant.

5. Consequently, this appeal is disposed by way of remand to the Id. First Appellate Authority.

[Dictated & Pronounced in the open Court].

Anita

(D.N.PANDA)
JUDICIAL MEMBER